IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

OP.No. 4400 of 2001(W)

PETITIONER:

APOLLO TYRES LIMITED,
SHANMUGHAM ROAD,
KOCHI – 682 031.
REPRESENTED BY ITS DEPUTY MANAGER, ACCOUNTS, N.RAJU.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE

RESPONDENTS:
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1. THE ASSISTANT COMMISSIONER (ASSESSMENT),
COMMERCIAL TAXES,
SPECIAL CIRCLE II,
ERNAKULAM.

2. THE GOVERNMENT OF KERALA
REPRESENTED BY THE SECRETARY (TAXES),
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/03/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 4400/2001

ORDER ON CMP NO. 7340/2001 IN O.P.No. 4400/2001

DISMISSED.

20/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 05/01/2001.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 4400 of 2001 W

Dated, this the 20th day of March, 2007

J U D G M E N T

Petitioner is challenging Ext.P1 order passed by the Assessing Authority demanding penal interest under Sec. 23(3) for the assessment year 1995-96. Penal interest pertains to short payment of tax applicable to non-inclusion of rubber cess in purchase turn over, when monthly returns were being filed by the petitioner, during the year 1995-96. The issue was covered by the full bench decision of this Court in MRF's case, wherein, this Court held that sales tax was not payable on rubber cess. However, the Supreme Court reversed the judgment of this Court vide judgment dated 19/12/1997. It is not known whether petitioner was also a party in the case before Supreme Court. In any case after Supreme Court declared the law on the subject, the same binds the petitioner as well as the department by virtue of operation of Article 141 of the Constitution of India. Therefore, even though the petitioner was not liable to include rubber cess as part of the turnover when sales tax monthly returns were filed, there is no justification for the failure of the petitioner in filing revised return after Supreme Court decision was published. Therefore, interest if

any has to be considered under Sec. 23 (3)A of the KGST Act for default committed for non-payment of tax after Supreme Court declared the law. It is not known whether the Assessing Officer himself issued any provisional assessment and issued Form 14D prescribed under Rule 18(3) of the KGST Rules. In any case, Assessing Officer has not considered the relevant aspects stated above and conduct of the petitioner in regard to filing of revised return or payment of tax.

2. In the circumstance, this Original Petition is disposed of vacating Ext.P1 with a direction to the Assessing Officer to recompute interest liability, if any, payable by the petitioner under Sec. 23(3) or 23 (3)A after verifying the records, the decision of the Supreme Court, statutory provisions and after issuing notice to the petitioner and after hearing the petitioner within a period of three months from today.

This Original Petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg